95-429

NO.

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

October Term, 1995

SHARON BROWN,
ADMINISTRATRIX OF THE ESTATE OF
RONNIE LEE BROWN, DECEASED,

*Petitioner*

v.

ROZANNE ODOM, TERRY GORY,
AND MICHAEL WOODCOCK
Individually and as Officers of the
City of Spartanburg Public Safety Department,

*Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Did the Defendant police officers exhibit deliberate indifference to the serious medical needs of an arrestee in the officers' custody, who died for lack of prompt medical treatment, such that these officers were liable under 42 U.S.C. §1983?

2. Is the time between an arrest and when police officers arrange for an arrestee to receive medical treatment solely dispositive for purposes of summary judgment granted to police officers in an action charging those officers with responsibility under 42 U.S.C. §1983 for the death of the arrestee alleging due to lack of medical attention?

## PARTIES TO THE PROCEEDING

The parties to the proceeding are the same as noted in the caption of this Petition:

Petitioner:

Sharon Brown, administratrix of the estate of Ronnie Lee Brown, deceased.

Respondents:

Rozanne Odom,
Terry Gory, and
Michael Woodcock,
individually and as officers of the City of Spartanburg Public Safety Department.

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**PETITION FOR A WRIT OF CERTIORARI**
**TO**
**THE UNITED STATES COURT OF APPEALS**
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**PETITION FOR A WRIT OF CERTIORARI**

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SHARON BROWN, Administratrix of the Estate of Ronnie Lee Brown, Deceased, Petitioner, by her attorney, under appropriate rules of this Court, requests this Court issue a writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

## OPINIONS BELOW

On May 27, 1993, Sharon Brown, as the personal representative of Ronnie Lee Brown's estate, brought an action under 42 U.S.C. §193 and §1988 in the United States District Court for the District of South Carolina. She named as defendants Officers Rozanne Odom, Terry Gory, and Michael Woodcock, individually and as members of the City of Spartanburg Police force. The Complaint alleged violations of these statutes and of the Due Process Clause of the Fifth and Fourteenth Amendments regarding the circumstances of Mr. Brown's death.

On February 25, 1994, the Defendants moved for summary judgment. The District Court granted that judgment on March 25, 1994. Ms. Brown appealed.

On June 5, 1995, the United States Court of Appeals for the Fourth Circuit affirmed. The Court concluded that negligence was not indicated in the short interval between the time when Mr. Brown was arrested and when the officers arrived with him at the hospital. The Court also agreed with the District Court under the circumstances the officers had no reason to believe that Brown was in danger.

## GROUNDS FOR JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its Opinion (per curiam, unreported) in *Brown v. Odom, et al.*, on June 5, 1995. No post-decision motions, such as a motion for reconsideration or for rehearing with a suggestion for rehearing en banc, were filed. In accordance with Rule 13.3 of this Court, this Petition is being filed within 90 days of the date of that Opinion.

The jurisdiction of this Court is invoked through 28 U.S.C. §1254(1).

## STATUTES OR PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment states:

> No person...shall be...deprived of life, liberty, or property, without due process of law... .

The Due Process Clause of the Fourteenth Amendment states:

> No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1988 states:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenders against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92-318, or Title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

## STATEMENT OF THE CASE

The matter arises from the arrest and death of one Ronnie Lee Brown ("Mr. Brown") in Spartanburg, South Carolina, on June 19, 1990. Mr. Brown died at the emergency room of Spartanburg Medical Center, apparently of heart failure. However, Sharon Brown ("Ms. Brown" or "Plaintiff" or "Petitioner"), administratrix of Mr. Brown's estate, contended that Ronnie Brown's death was the result of an acute asthma attack which went untreated by unthinking and uncaring police officers.

The United States Court of Appeals affirmed summary judgment granted by the United States District Court for the District of South Carolina as to the action taken by Ms. Brown. Her action was against three members of the Spartanburg police force regarding the circumstances of Mr. Brown's death, Rozanne M. Odom ("Ms. Odom" or "Defendant Odom" or "Respondent Odom"), Terry Gory, ("Mr. Gory" or "Defendant Gory" or "Respondent Gory") and Michael Woodcock ("Mr. Woodcock" or "Defendant Woodcock" or "Respondent Woodcock") (or collectively "Police Defendants" or "Police Respondents").

On May 27, 1993, Ms. Brown filed her Complaint, alleging violations of 42 U.S.C. §1983, 42 U.S.C. §1988, the Due Process Clause of the Fourteenth Amendment, and South Carolina's wrongful death statute. The Complaint alleged that the Police Defendants "acted in reckless disregard for, and with conscious and deliberate indifference toward, the rights, privileges and immunities" of Mr. Brown regarding the circumstances leading to his death.

On February 25, 1994, the Police Defendants moved for summary judgment. On March 25, 1994, the District Court (Herlong, Jr., J) granted summary judgment to the Defendants. The District Court noted that as to a §1983 action, a plaintiff in these circumstances must allege "acts or omissions sufficiently

harmful to evidence deliberate indifference to his serious medical needs." The District Court concluded, without elaboration, that Petitioner had not met this burden.

Petitioner appealed to the United States Court of Appeals for the Fourth Circuit, on March 24, 1994. On June 5, 1995, the Court of Appeals affirmed the summary judgment granted by the District Court. The Court stated in reviewing the evidence and under the circumstances, there was no reason for the officers to believe that Mr. Brown was in serious medical danger at or soon after his arrest and thus had no reason to know that he needed immediate medical attention.

*STATEMENT OF MATERIAL FACTS*

The basic facts are reflected, in large part, in the Fourth Circuit's Opinion in this matter. [See App. 12a et seq.]. Petitioner here also supplies additional facts not noted in that Opinion.

*A. Background, Arrest of Mr. Ronnie Lee Brown*

On June 19, 1990 at approximately 4:07 p.m., the Spartanburg Public Safety Department dispatched Officers Rozanne Odom and Terry Gory to the Mister Money establishment at 418 West Main Street in Spartanburg, South Carolina. The purpose of the call was to respond to a possible forgery in progress.

When the officers arrived at the scene, Ronnie Lee Brown, 19 years old, an individual who fit the description of the suspect, was exiting the store. According to police, Officer Gory approached Mr. Brown, Mr. Brown began to run. (See answers to Plaintiff's Interrogatories). Gory chased him on foot but then lost sight of him behind a car dealership, Dave Edwards Toyota. Officer Odom pursued Mr. Brown by car at the same time, but also lost track of him. While other officers continued to search for the suspect, Officers Gory and Odom returned to the store to take an incident report. Officer Gory then dropped Odom off at

her patrol vehicle.

However, when an officer reported having spotted the suspect, Officer Gory resumed his pursuit of Mr. Brown by car. Brown was apprehended at approximately 4:45 p.m., on foot, by Officer Christopher Banks. Officer Gory arrived at the scene soon after to assist in the arrest, and Officer Banks turned custody of Mr. Brown over to Officers Gory and Officer Michael Woodcock.

Mr. Brown was arrested near his home, which was an apartment at Hub City Court in Spartanburg which he shared with his mother, Shirley Rice ("Ms. Rice"). Ms. Rice was present that afternoon. At about the time of the arrest, she was leaving the apartment to take her husband back to Greenville, South Carolina.

As she started to drive away from the area at around 4 p.m. she saw a group of people gathered around some police cars, and noticed that among the group was her son. According to Ms. Rice, as she got to the scene, she came "right there to the car door" and Mr. Brown was telling her "I can't breathe" and "the police pushed him on in the car and slammed the door." (See deposition of Ms. Rice). She followed the police to the city jail.

According to police, Mr. Brown complained of being tired and "appeared winded" when he was arrested. Officers Banks and Woodcock had to help him walk the approximately eighty yards to Officer Gory's patrol car.

Police transported Mr. Brown to the jail and not to any medical facility. Nor were any paramedics called to the arrest scene. Police did not radio ahead to have any medical treatment available for Mr. Brown when the arrived at the jail.

Police statements indicated that on the way to the jail, which was "not very far," Mr. Brown complained of being shot,

and Officer Gory opened the windows and turned on the air conditioner. Ms. Rice later stated that in following the patrol car, she could see that her son was "slumped over" in the back seat. Upon arriving at the jail, Officers Gory and Rice helped Mr. Brown from the patrol car.

Mr. Brown complained that he could not breathe. According to Ms. Rice, she arrived at the jail at the same time as the patrol car containing Mr. Brown. She "jumped straight out of my car and rushed to--over to the police car." She opened one of the doors of the patrol car to hear Mr. Brown say, "Mama, I can't breathe" and "I can't walk, Mama; tote me" [that is, he needed to be carried]. (Rice Deposition at 66-67). Mr. Brown told his mother that he needed to go to a hospital.

As for the police, however, Officer Gory brought Mr. Brown into the jail sat Mr. Brown down the floor inside the jail. According to Ms. Rice, at that point about seven or eight police were near Mr. Brown but they did nothing about his situation. According to the detention supervisor, Bonita Smith, Brown fell down when Gory brought him in, and Brown was breathing heavily while the officers stood beside him.

As Ms. Rice later stated (Rice Deposition):

> And when he collapsed in the floor he told me to but--- would I buy him a soda, and I told him yes. And I told them would they please--- I --- started getting upset because I could that that, you know, there was something terribly wrong. And I asked them would they please take him to the hospital. And one police officer came over there and kicked him and said, 'Ain't nothing wrong with him but running from us,' and he said, 'If you don't shut up,' say, 'I'm going to lock you up.'

Ms. Rice informed the police that Mr. Brown suffered from asthma and was having an asthma attack. That police knew this from Ms. Rice no later than shortly after the point of Mr.

Brown's arrival at the jail was confirmed by later deposition of Ms. Rice and of Ms. Bonita Smith.

Ms. Bonita Smith refused to accept Brown into the jail and suggested that he be checked by a doctor, based on Ms. Rice's contention that Mr. Brown was having an asthma attack. It appeared that Ms. Smith also later stated in her deposition that what she observed of Brown's condition did not seem to correspond to Brown's mother's assertions regarding asthma. Still, nothing was done at the jail to ascertain Mr. Brown's condition there, why he had fallen when he was brought in, why he had to be helped into the patrol car, helped out, and placed on the floor. Neither was Mr. Brown's pulse taken, nor his forehead felt, or any medical attention at all directed to him.

The police knew that Mr. Brown was in medical difficulty, were informed by his mother that he suffered from asthma and was having an asthma attack, and realized that Mr. Brown needed immediate medical treatment. Mr. Brown, however, was not, even then, immediately taken to the hospital notwithstanding his mother's entreaties to the police to "get him to the rescue squads." Rather, the Officers stood around the detention center

> [a]bout 15 or 20 minutes, to my knowing, with them discussing on what was they going to do. 'Cause I heard them say 'What we going to do?' And it was like about six of them got in a huddle, and I could hear them say, 'Well, how we going to take him?' And stuff like that, and by that--it was so long 'till I said, 'Would you-all please taken him to the hospital and let me take him?' And they said, 'No,' and they was--some of them was like laughing at me and say[ing], 'No.'

Finally, at approximately 5:00 p.m.--by now at least a half-hour since Mr. Brown's arrest--Officer Gory went to speak to his supervisor, Lieutenant C.E. Ridgeway, and informed him

that Brown was complaining of having trouble breathing. He told the Lieutenant that Ms. Rice had said that Mr. Brown had asthma but that he did not take medication.

*B. Mr. Brown Taken to Hospital, He Dies There*

At approximately 5:06 p.m., Officer Gory took Mr. Brown in his patrol car from the city jail to the Spartanburg Regional Medical Center. Officer Woodcock followed in his own car; he stated in his affidavit that during the trip to the hospital, he saw Mr. Brown sit up and look around several times in the back seat of Officer Gory's car. Ms. Rice also followed the police to the hospital.

However, this was not a speedy trip. The police did not call for a rescue squad or an ambulance. They did not radio ahead for emergency medical personnel to be standing by. They transported Mr. Brown in a patrol car and did not use siren, horn, or flashers en route to the hospital. In fact, even though Ms. Rice (and her husband who was still with her) were stopping at all of the red lights on the way, when arrived at the emergency room, the police were still getting Mr. Brown out of the patrol car.

They arrived at the hospital at approximately 5:12 p.m. Officers Gory and Woodcock helped Mr. Brown into the hospital through the back entrance of the emergency room, where prisoners are taken. Mr. Brown could not walk by himself.

Police laid Mr. Brown on the floor in the emergency room and told a doctor about Mr. Brown's condition. The Officers then carried Brown into another room and placed him on a stretcher and removed his handcuffs.

Ms. Rice first went into the emergency room, but was not permitted to see her son. She then entered the hospital, sat around for 10 to 15 minutes, and again was refused the opportunity at least twice more to see Mr. Brown.

According to Officer Gory, approximately 30 minutes

from the time the Officers arrived with Mr. Brown,

> a female hospital employee asked me where the suspect's chart was. I explained how the suspect came to be in the room and stated that I did not think a chart had been filled out. She walked in the room briefly. When leaving, she appeared mad. About two or three minutes later, another female entered the suspect's room and attempted to get information from him. The suspect did not respond. I attempted to get a response, but he just looked up.

Officer Gory left the room to report to Lt. Ridgeway, and when Mr. Brown was checked on again, he had no pulse or respiration. Immediate emergency procedures began. Ms. Rice later stated that a physician approached her and began to give her some very bad news about her son:

> And then he said--he started asking me questions about my son, and asked me did he have asthma, have he--have he ever used any drugs and stuff like--questions like that. And then he said, 'It's his heart," and I said, 'His heart what?' You know, I just got hysterical. I said, 'His heart what?' And he looked at me and he said, 'His heart,' he said, 'We're trying to [revive] him,' And--and he said, 'We're working in there, we're doing everything we can.'

Resuscitation attempts failed.

Ms. Rice stated that about 15 minutes after the physician first spoke to her, he returned and "told me [Mr. Brown's] heart had stopped beating." The doctor told Ms. Rice that her son was dead.

Ronnie Lee Brown was pronounced dead at 7:23 p.m. on June 20, 1990. (As the Court of Appeals noted and as the evidence indicated, the actual time of death may have been about an hour earlier).

An autopsy was conducted the next morning. It revealed cocaine and cocaine metabolites in Brown's urine, but no cocaine metabolites in his blood.

Dr. J. David Wren, the pathologist at the Spartanburg Regional Medical Center who completed Brown's autopsy report was surprised at the lack of metabolites in the blood, but suggested that the long interval between the suspect's death and the autopsy, as well as the period of time before analysis, might account for the degradation of cocaine metabolites in the blood.

In his report, Dr. Wren stated:

> In view of the history of asthma in this individual, an extensive search through medical records has been performed. A possible asthmatic attack was noted approximately five years prior to this episode but none since that time. Additionally, investigation by the Coroner with the family reveals no visits to a physician recently for asthmatic complaints. Finally, there was no gross or microscopic evidence of asthma thus an asthmatic attack is essentially eliminated.
>
> Based on the history and autopsy findings as stated in this protocol, it is my opinion that this individual died as a result of acute respiratory arrest secondary to cocaine ingestion.

(emphasis added). Rice testified at her deposition that she never told the police about Brown's use of cocaine.

However, there is no doubt at least as to Mr. Brown's asthma condition. Medical records going back to 1982 indicate that Mr. Brown received some treatment by other physicians for bronchial asthma. This condition was also reflected in health insurance forms and medical forms in 1987 and 1973.

Further, at the time of Mr. Brown's arrest and when he was sitting on the floor of the jail while police commiserated over what to do with him, whether Mr. Brown was suffering from an acute heart condition due to ingestion of cocaine or from an severe asthma attack is of little consequence. It was plain that he was in serious respiratory condition (which Ms. Rice believed as an asthma attack) and it was plain that he needed prompt medical attention. He was in serious enough condition that the jailer refused to accept him before he was seen by a doctor. But Mr. Brown was not transported to the hospital until about a half-hour after his arrest.

*C. Action Filed, Summary Judgment Granted*

On May 27, 1993, Sharon Brown, as the personal representative of Brown's estate, brought an action under 42 U.S.C. §§ 1983 and 1988 in the United States District Court for the District of South Carolina. [See App. 1a- App. 4a and App. 5a-App. 8a for Complaints]. She named as defendants, in their official and individual capacities, Officers Rozanne Odom, Terry Gory, and Michael Woodcock, alleging a violation of the Due Process Clause of the Fourteenth Amendment due to the officers' deliberate indifference to Brown's serious medical needs.

On February 25, 1994, the Defendant Officers moved for summary judgment. They contended that the circumstances did not suggest a "deliberate indifference" to Mr. Brown's medical needs and emphasized what they contended was a short period of time (approximately a half-hour) between Mr. Brown's arrest and

the point where he was transported by police to the hospital. The Defendants also raised issues of immunity. (However, immunity was not the basis for the District Court's decision on the motion, was not addressed by the Fourth Circuit's opinion, and it not raised in this Petitioner).

In Petitioner's response to the summary judgment motion, she stated that at the least, there are fact issues to be determined "in whether the police were given actual notice at the time of arrest of the serious medical problem, and despite seeing physical evidences of this warning, chose to disregard it. She noted that Mr. Brown's medical condition was "certainly life threatening."

The District Court (Herlong, J.), on March 25, 1994, granted the summary judgment motion as to all defendants in both their official and individual capacities. [App. 9a et seq.]. The District Court concluded, "It is undisputed that less than half an hour elapsed between the time that Brown was arrested and the time he was brought to the Spartanburg Regional Medical Center. Brown's personal representative has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs." [App. 10a]. The District Court did not further elaborate on that conclusion.

*D. Fourth Circuit Affirms*

Petitioner appealed to the United States Court of Appeals for the Fourth Circuit. She contended that there certainly was evidence so far developed showed that the Defendant Officers demonstrated a deliberate indifference to Mr. Brown's medical needs. And she noted that fact issues surrounding these circumstances precluded summary judgment.

In an Opinion issued June 5, 1995, the Fourth Circuit affirmed. [App. 12a-App. 18a]. The Court declared [App. 17a]:

> A claim of deliberate indifference to serious medical needs would require a greater showing than was made here, even if it were to be assumed that Brown's medical needs were serious and that a finding of negligence on the part of one or more defendants could be supported by the evidence. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).
>
> Less than one-half hour elapsed between the time Brown was apprehended and the time the officers arrived with him at the hospital. While in some situations, a delay of one-half hour could constitute deliberate indifference, such was not the case here, because the police had no reason to believe that the delay would put Brown in danger.
>
> Considering the information available to the police, their decision to bring him to the jail from the site of the arrest rather than bringing him directly to the hospital was not unreasonable. There was no proof that the police deliberately delayed taking Brown to the hospital after realizing that he was experiencing trouble breathing and should be examined by a doctor. In addition, the fact that the officers used a police car to transport Brown to the hospital instead of summoning a rescue vehicle, and the fact that they themselves took him into the hospital instead of waiting for a litter or a stretcher, in no way showed that they were indifferent to his medical needs. The police reacted as quickly as was warranted to the situation as they perceived it.

Petitioner now submits this Petition to this Court.

## REASONS FOR GRANTING WRIT

### I. THE CIRCUMSTANCES SHOWED A "DELIBERATE INDIFFERENCE" BY THE RESPONDENT OFFICERS TO THE ARRESTEE'S IMMEDIATE MEDICAL NEEDS SO AS TO DEFEAT SUMMARY JUDGMENT.

In *Estelle v. Gamble*, 429 U.S. 97 (1976), this Court considered the situation of a Texas inmate who was injured while performing a prison work assignment and was subjected to numerous administrative delays and obstructiveness concerning various complications of medical treatment. The Court stated (429 U.S. at 103-104) prison authorities have an obligation, through the principles cognizable under Eighth Amendment and subject to an action under 42 U.S.C. §1983, "to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." In the worst cases, such a failure may actually produce physical 'torture or lingering death'... . Citing *In re Kemmler*, 136 U.S. 436 (1890). The infliction of "such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common-law view that 'It is but just that the public be required to care for the prisoner, who cannot be reason of the deprivation of his liberty, care for himself.'" Citing *Spicer v. Williamson*, 191 N.C. 487, 132 S.E. 291 (1926) at 293 [footnotes omitted].

The *Estelle* Court thus stated at 429 U.S. 104-105 [citations and footnotes omitted, emphasis supplied]:

> We therefore conclude that *deliberate indifference to serious medical needs of prisoners* constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in *intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.* Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under §1983.

This standard is not meant by "inadvertent failure" to provide adequate medical care or by mere negligence in diagnosis and treatment. Medical malpractice "does not become a constitutional violation merely because the victim is a prisoner." To state a "cognizable claim" under §1983, a prisoner "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." (The Court found, in the situation before it, that the prisoner's pro se claim was not sustainable and affirmed the dismissal of it, but see Stevens, J. dissenting).

Later, this Court declared that pre-trial detainees are protected against inadequate inattention to medical needs under the Due Process Clause, rather than the Eighth Amendment which is applied to convicted prisoners. In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983) involving issues of compensation for medical treatment provided to an arrestee who was shot wounded by a police officer during a chase, this Court noted that scrutiny of such circumstances under the Eighth Amendment is appropriate "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." 463 U.S. at 244, noting *Bell v. Wolfish*, 441 U.S. 520 (1979) and *Ingram v. Wright*, 430

U.S. 651 (1977).

The Court continued [emphasis supplied]:

> The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons, such as [the arrestee], who have been injured while being apprehended by the police. In fact, the due process rights of a person in [arrestee's] situation *are at least as great as the Eighth Amendment protections available to a convicted prisoner.*

The *City of Revere* Court did not precisely define the standard to be applied in a situation of attention to medical needs of pretrial arrestees under the Due Process Clause. See 463 U.S at 244-245. But in general these circumstances have been held subject to the same general standard described in *Estelle.*

Indeed, the standard of "deliberate indifference to serious medical need" is applied in the Fourth Circuit as to claims under the Due Process Clause by arrestees alleging inadequate or delayed medical by police or similar personnel. See *Mitchell v. Aluisi*, 872 F.2d 577 (4th Cir. 1989) and *Wisenant v. Yuam*, 739 F.2d 160 (4th Cir. 1984).

Given these general standards, it is of course clear that what will constitute "deliberate indifference to serious medical needs" of a pretrial arrestee, sufficient to form the basis for a cause of action under the Due Process Clause and §1983, will vary with the situation. In general such deliberate indifference would mean "both recklessness and actual intent." See *Miller v. Solom*, 728 F.2d 1020 (8th Cir. 1984) and Nahmond, *Civil Rights and Civil Liberties Litigation, The Law of Section 1983* (3rd Ed., Vol 1, §3.07). And see also, e.g., Avery, M. and Rudovsky, D., *Police Misconduct* (2nd Ed.) at §2.3(i) stating that "When a person is arrested and confined, he or she is entitled to necessary

medical treatment, and a deliberate or intentional failure to provide such states a claim under §1983).

As Nahmond notes, the Fourth Circuit itself commented on this standard in *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990) at 851:

> To establish that a health care provider's actions constitute deliberate indifference to a serious medical need, the treatment must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness. Deliberate indifference may be demonstrated either by actual intent or reckless disregard. A defendant acts recklessly by disregarding a substantial risk of danger that is either known to the defendant or which would be apparent to a reasonable person in the defendant's position.

This definition of the standard contemplates more than negligence (and see *Daniels v. Williams*, 474 U.S. 327 (1986)). However, it is broad enough to encompass a variety of circumstances. Another court has commented, in an inmate situation, that the standard is meant in a showing that prison officials were "totally unconcerned with" the prisoner's welfare. *Duane v. Lane*, 959 F.2d 673 (7th Cir. 1992), at 677. And see also, *Hill v. Nicodemus*, 979 F.2d 987 (4th Cir. 1992).

Many of the cases involve circumstances somewhat different than the present case, such as suicides, prison beatings, injuries inflicted by police or prison guards, and inadequate medical care. (See review of case authorities in Nahmond, *supra*, §3.07-3.08 and observation made by Avery, M., *Police Misconduct*, *supra*, at §2.3(i), p. 2-69). Here, Petitioner did not allege that his medical care, once it was made available, was inadequate. Nor was this a situation where the Petitioner's medical condition was brought about or aggravated by the arresting or detaining officers.

Nevertheless, delay in providing medical care and indifference to the need for such care that shocks the conscience, is intolerable to fundamental fairness, or amounts to police being totally unconcerned with the welfare of the arrestee, would be actionable. Again, as the Fourth Circuit itself stated in *Martin v. Gentile*, 849 F.2d 863 (4th Cir. 1988) at 871, "no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need of such treatment is apparent."

The Respondent officers knew quite well that Mr. Brown was in a serious medical condition. Upon his arrest he had to be helped to the police cruiser, en route to the jail he was slumped in the back seat, upon arriving at the jail he had to be helped inside and was placed on the floor, his mother continually informed the officers that her son was in immediate need of medical attention, and the jailer refused to admit or process him until he was seen by a doctor. Yet the officers did not take Mr. Brown directly to a clinic or hospital upon his arrest, did not radio ahead for medical treatment to be available upon arriving at the jail, and after getting to the jail, waited for perhaps 15 minutes with Mr. Brown in a heap on the floor, before deciding to take him themselves--instead of calling an ambulance or paramedics then and there--to the hospital, where by that time he was close to death. The additional delay in his receiving the medical treatment he desperately needed, was the final contributing factor in Ronnie Lee Brown's death.

There was evidence that police officers were well aware that Mr. Brown had difficulty breathing, that he had asked his mother-- who had followed the patrol car en route to the jail and came directly to the car when Mr. Brown and the officers arrived at there--to "tote" him because he could not walk on his own.

There was also evidence that Mr. Brown was kicked at least once while lying on the floor at the jail, that police officers bullied and threatened his mother when she continued to plead for them to provide some medical care for her son, and that the officers exhibited a colossal lack of interest in whether Mr. Brown needed medical care or not. One officer said that there was nothing wrong with him except "him running from us."

It hardly needs stating that this circumstance shocks the conscience, is intolerable to fundamental fairness, or amounts to police being totally unconcerned with the welfare of the arrestee. Certainly the situation was sufficient to withstand summary judgment under that standard.

In dismissing the case, the District Court relied upon *Belcher v. Oliver*, 898 F.2d 32 (4th Cir. 1990), which involved a suicide. But even a cursory examination of the present facts demonstrates that *Belcher* need not be applied here for such a result. The court there stated that no claim is stated against police officers for inadequate medical care "when there exists no objective evidence that Belcher even had a serious need for such attention." Here, the "objective evidence" was present in abundance.

This situation clearly involved neglect by police officers that amounted to "acts or omissions" sufficiently harmful to constitute "deliberate indifference." See *Boring v. Kozakiewicz*, 833 F.2d 468 (3rd Cir. 1987), cert.den. 485 U.S. 991, at 471. And see *Lattany v. Four Unknown United States Marshals*, 845 F.Supp. 262 (E.D.Pa. 1994), at 267.

Further, the denial here of prompt medical care was demonstrably penal in nature. See *Martin v. Gentile*, *supra*, 849 F.2d at 870, noting that a constitutionally impermissible "punishment" is shown when a condition or restriction of confinement is imposed with an expressed intent to punish or is

so unreasonably unrelated to a legitimate non-punitive governmental objective that an intent to punish can be inferred.

The general comments by the police officers, the interminable minutes of standing around while discussing what to do with Mr. Brown, the verbal abuse directed at his mother, the failure even to check Mr. Brown's vital signs when he obviously in medical distress, and the atmosphere of the situation even as it appears from the appellate record, met the standard of a "restriction on confinement" that is unreasonably unrelated to a legitimate non-punitive governmental objective. The circumstances establish that the failure to attend to Petitioner's medical needs that were plain to a reasonable person were motivated to no small degree by a desire to punish, based in part on the officers' contempt for Mr. Brown and the fact that they had to engage in a foot race to arrest him on a suspected forgery charge. But this reaction, even if explicable in the abstract, cannot justify utilizing a denial of necessary medical care to in retaliation for Mr. Brown's flight when the officers arrived at the Mister Money store.

And see also, generally, *Colle v. Brazos County*, 981 F.2d 237 (5th Cir. 1993) (cause of action stated where sheriff's on-duty jail supervisory staff did not include anyone with authority to transfer an inmate to a medical facility and there was inadequate monitoring of pretrial detainees which amounted to denial of medical care); *Taylor v. Bowers*, 966 F.2d 417 (8th Cir. 1992) (summary judgment denied defendants where plaintiff alleged deliberate indifference to his need for surgery for ruptured appendix, claiming denial of surgery was intentionally prolonged to prompt the inmate to confess that he had swallowed drug-filled balloons); and *Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989) (liability found based on physician's assistant's action at jail who diagnosed inflammation of prisoner's leg and prescribed

pain relievers, but consistently refused to refer him to a doctor or to have X-rays taken).

Summary judgment will not lie if the dispute is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The non-moving party is entitled to the benefit of all possible inferences in that party's favor which reasonably can be drawn from the facts. See *Estate of Kimmell v. Seven Up Bottling Co.*, 993 F.2d 410 (4th Cir. 1993).

However, the district court's function at the summary judgment stage is not to weigh the evidence, or to decide upon disputed conclusions from those facts. *Langley v. Allstate Insurance Co.*, 995 F.2d 841 (8th Cir. 1993). The court is to determined, chiefly, whether there is a genuine issue for trial. Summary judgment is not to be a substitute for the trial itself. Further, such evidence need not be dispositive or even persuasive so long as the non-moving party presents some evidence that generates uncertainty as to the true state of any material fact. See *Beacon Enterprises, Inc. v. Menzies, 715 F.2d 757* (2nd Cir. 1983), at 762.

On review of summary judgment, the appellate court is required to apply the same test that the district court should have utilized initially. See *Celotex Corp v. Catrett*, 477 U.S. 317 and, e.g., *Goodman v. Mean Johnson & Co.*, 534 F.2d 566 (3rd Cir. 1976), *cert.den.*, 429 U.S. 1038.

Of course, summary judgment also is not available to the moving party, even if there are not material facts in dispute, unless the moving party is entitled to judgment as a matter of law. Here, as described, both the differences in factual scenario as well as the application of legal principles to the scenario assuming no material facts were in dispute, required that summary judgment for Respondents be denied.

Applying these standards to the summary judgment obtained by Respondents in this case, and affirmed by the Fourth Circuit, it is evident that the standards enunciated in *Estelle* and *City of Revere* received little attention here. Granting this Petition would provide this Court with the opportunity to reiterate these standards and to declare that in such instances, summary judgment, while is may be available, should not be rendered with such a cursory and offhand review of circumstances leading to the death of a pretrial arrestee within less than an hour of arrest and his being taken into police custody.

Neither is this situation disposed of by the observation that, as the autopsy report indicates (but does not conclusive establish) Mr. Brown may have died from heart failure due to the ingestion of cocaine instead of an acute asthma attack. The fact was that Mr. Brown was in severe medical distress when he was arrested and when he was at the jail, whether he was suffering from pneumonia, perforated ulcer, asthma, heart condition brought on by cocaine, or whatever, the duty of these officers under the Due Process Clause to supply prompt and reasonable medical attention was the same.

As the court stated in *Davis v. Jones*, 936 F.2d 971 (7th Cir. 1991), *reh.den. en banc*, 946 F.2d 538 [emphasis supplied]:

> Police must respond to conditions they can observe. Just as the Constitution does not demand that police obtain medical care for prisoners whose injuries appear to be slight but turn out to be serious, so the officers must obtain medical care when the wound reasonably appears to be serious even if the risk turns out to be small. *Police can only act on appearances; anything else is gambling with another person's life, a wager the Constitution does not permit arresting officers to undertake.* Whether the injury is actually serious is a question best left to a physician.

## II. TIME ALONE SHOULD NOT BE A DISPOSITIVE FACTOR FOR SUMMARY JUDGMENT IN AN ACTION SEEKING POLICE RESPONSIBILITY FOR DEATH OF AN ARRESTEE DUE TO LACK OF MEDICAL TREATMENT

It is evident that both the District Court and Fourth Circuit considered dispositive the fact that there was only about a half-hour interval between the time Mr. Brown was arrested and when police transported him to the hospital. In fact, that these opinions have concluded that time alone is a central factor in whether there will be police responsibility in such circumstances.

Additionally, then, this Court must grant this Petition to make clear that police cannot avoid responsibility by relying solely or even chiefly upon the time interval between when police recognize an arrestee is in serious medical condition and when he is transported to a hospital.

Given the fact that Mr. Brown was clearly in serious medical trouble (he was to die in less than an hour, after all), the trial judge's emphasis on the fact that less than a half-hour elapsed between the time Mr. Brown was arrested and the time he was brought to the medical center constitutes, at the least, an inadequate analysis of the case. This is an instance were minutes counted in the extreme. A young man's life was slipping away, the officers had been given all the information they needed to act, and they had observed his difficulties sufficiently so that their failure to respond cannot be excused on any legal rationale.

Here, Mr. Brown's condition was so critical that even a minute's delay could have been fatal--or so is suggested by the facts and the reasonable inferences from them in Mr. Brown's

favor. That the Respondents dallied in getting Mr. Brown prompt medical treatment is beyond any doubt. That he is now dead is a cold fact which his mother must forever bear. The cavalier dismissal of Petitioner's action--and the Fourth Circuit's affirmance of that dismissal--on the ground that only thirty minutes was involved fails to factor in the truth that, under these facts, thirty minutes was quite obviously too long. Under these facts, thirty minutes constituted deliberate indifference to serious medical needs.

Indeed, under particular circumstances, delay in providing medical treatment can be a factor in finding liability under §1983. See generally, Annotation, 28 A.L.R.Fed. 279, "Relief Under Federal Civil Rights Act to State Prisoners Complaining of Denial of Medical Care" esp. §16 and 18. And see, e.g., *Shannon v. Lester*, 519 F.2d 76 (6th Cir. 1975) (delay of 5 1/2 hours in receiving treatment as to driver involved in accident and arrested for driving while intoxicated); *Thomas v. Pate*, 493 F.2d 151 (7th Cir. 1974), *vacated* 419 U.S. 813, *reh. den.* 419 U.S. 1041 (delay in removing sutures while inmate was placed in punitive confinement with result that wound became infected constituted intentional mistreatment likely to aggravate medical condition), and *Thompson v. Portland*, 620 F.Supp. 482 (D.C. Me. 1985) (blind diabetic arrested, fell unconscious, went into insulin shock, subsequent detention of and withholding medical treatment from plaintiff, who had revived sufficiently to inform officers of his condition, deprived plaintiff of due process rights). Compare *Porter v. Detroit*, 639 F.Supp. 589 (E.D. Mich. 1986).

And see also, *Baldi v. City of Philadelphia*, 609 F.Supp. 162 (E.D.Pa. 1985), where the court found that a §1983 claim had been established even though the delay in providing treatment was 20 minutes. Police had stopped a vehicle for running a red light. The vehicle occupants were detained for

about 20 minutes while the traffic citation was written. Plaintiff alleged that a vehicle occupant was in "desperate need of emergency medical treatment and was enroute to the hospital" when the vehicle was stopped. The delay in reaching the hospital due to the 20 minute wait for the ticket was claimed a contributing factor to the individual's death in the hospital the next day.

The court stated that once a person is under custody and a duty of police officers attaches under constitutional principles, "the individual under state control has a constitutional right to adequate medical care, the intentional deprivation of which is actionable through section 1983." The court concluded that if the plaintiff "can establish that the state exercised such a degree of control over the decedent that the positive duty to provide care and transportation attached, she may be able to recover for the state's failure to act. Plaintiff may also be able to establish that the state intentionally interfered with the decedent's right promptly to obtain available medical treatment when he needed it by deliberately preventing him from proceeding to the hospital." See 609 F.Supp. at 167, footnote omitted.

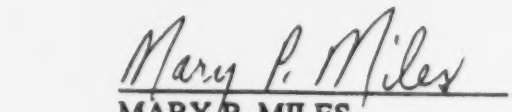
Here, the duty to provide appropriate medical care is undisputed. The "short" delay in doing so, in and of itself, cannot be the basis for granting summary judgment for Respondents--indeed, as the authorities indicate, even a short delay can be critical for imposing, as opposed to denying, liability.

The summary judgment granted to Respondents must be reversed. This Court has not commented extensively on these issues since *Estelle* and *Revere*. Those standards should not be distorted in this fashion. This Court should grant this Petition to reiterate the standards available in these instances and to declare that summary judgment is not the appropriate means to dispose of such actions simply on the basis of time. A half-hour surely is enough time to stand by idly while somone dies.

## CONCLUSION

THEREFORE, Petitioner SHARON BROWN, Administratrix of the Estate of Ronnie Lee Brown, requests of this Court that it GRANT her Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

RESPECTFULLY SUBMITTED,



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No. 95- _____

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

October Term, 1995

---

SHARON BROWN,
ADMINISTRATRIX OF THE ESTATE OF
RONNIE LEE BROWN, DECEASED,

*Petitioner*

v.

ROZANNE ODOM, TERRY GORY,
AND MICHAEL WOODCOCK
Individually and as Officers of the
City of Spartanburg Public Safety Department,

*Respondents*

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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# APPENDIX TO PETITION

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF SOUTH CAROLINA**
**SPARTANBURG DIVISION**

| | |
|---|---|
| **Sharon Brown as Administratrix of the Estate of Ronnie Lee Brown, deceased,** | |
| **Plaintiff,** | **C.A. No. 7:93-1263-20** |
| **vs.** | |
| **Rozanne M. Odom, Terry Gory and Michael Woodcock, individually and as Police Officers in the Police Division of the City of Spartanburg Public Safety Department** | **COMPLAINT (survival) (Jury Trial Demanded)** |
| **Defendants.** | |

Plaintiff complaining of the Defendants would respectfully show:

1. This is an action at law to redress the deprivation under color of State law of a right, privilege or immunity guaranteed Plaintiff's Intestate by the Constitution of the United States. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. §§1983, 1988.

2. Jurisdiction is invoked under § 28 U.S.C. §1343.

3. Plaintiff is a citizen and resident of Spartanburg, South Carolina and is the duly appointed administratrix of the estate of Ronnie Lee Brown, deceased, who died on June 19,

1990 when he was a 19-year old citizen and resident of Spartanburg, South Carolina.

4. This action is brought pursuant to the South Carolina Survival Act, §§15-5-90 and 15-5-100 for the benefit of the estate of Plaintiff's Intestate.

5. At all times herein mentioned Defendants, R.M. Odom, Terry Gory, and Michael Woodcock who are citizens and residents of Spartanburg County, South Carolina, were duly appointed and acting police officers in the Police Division of the City of Spartanburg Public Safety Department, Spartanburg, South Carolina. This action is brought against them in their personal capacity and as police officers.

6. At all times mentioned herein the Defendants acted under color or pretense of the statutes, ordinances regulations, customs and usages of the City of Spartanburg South Carolina; and the Defendants engaged in the illegal conduct hereafter described, to the injury and death of Plaintiff's Intestate, by depriving him of the rights, privileges and immunities secured by the Constitution and the laws of the United States.

7. On June 19, 1990, at about 4:00 p.m., Plaintiff's Intestate was arrested and taken into custody by Defendants Odom and Gory, on a public street in the City of Spartanburg, South Carolina. Plaintiff's Intestate, who suffered from asthma, was unable to get his breath, and although Defendants Odom and Gory were made aware of that fact, they, nevertheless handcuffed Plaintiff's Intestate, shoved him into their car, and took him to the Spartanburg City Jail. When they arrived Plaintiff's Intestate was still unable to breath or even to stand alone, but Defendants refused to remove the handcuffs, and dragged him into the jail. Upon seeing the condition of Plaintiff's Intestate, the jailer refused to book him; and, after further delay, Defendants, Gory and Woodcock transported Plaintiff's Intestate to the Emergency

Room at the Spartanburg Regional Medical Center where, without having received any medical attention or relief, he died as a result thereof at about 5:55 p.m..

8. At the times hereinabove set forth, Defendants Odom, Gory and Woodcock acted in reckless disregard for, and with conscious and deliberate indifference toward, the rights, privileges and immunities secured Plaintiff's Intestate by the Constitution and laws of the United States, in the following particulars:

a. In forcibly manhandling and handcuffing Plaintiff's Intestate when he was visibly in a distressed and helpless condition;

b. In not rendering any medical or humanitarian assistance to Plaintiff's Intestate;

c. In refusing to permit the mother of Plaintiff's Intestate to attend her son;

d. In refusing to transport Plaintiff's Intestate to a place where he could receive immediate medical assistance which was visibly required;

e. In transporting Plaintiff's Intestate to jail despite his obviously critical physical condition;

f. In refusing to permit the mother of Plaintiff's
Intestate to accompany her son into the Spartanburg Regional Medical Center, or to offer him assistance;

g. In exercising total disregard for the health and welfare of Plaintiff's Intestate while he was in their custody;

h. In treating Plaintiff's Intestate in a manner which was cruel, unjust, and not within the bounds of decency;

i. In violating the sated and written policies of the Police Division of the Spartanburg Public Safety

Department, Spartanburg, South Carolina; and

j. In acting with gross and total disregard of the safety and life of Plaintiff's Intestate under the circumstances then existing.

9. As a direct and proximate result of the acts and omissions of the Defendants as hereinabove set forth, Plaintiff's Intestate suffered conscious pain and suffering, including the denial of the comfort of the presence of his mother when he died; he suffered the loss of his life; he incurred medical and hospital bills; and his estate incurred funeral and burial expenses.

10. Plaintiff is entitled to judgment against Defendant's, jointly and severally for actual and punitive damages.

**WHEREFORE**, Plaintiff demands judgment against Defendants, jointly and severally, for actual and punitive damages in such amount as is appropriate, for attorney fees, and for such other and further relief as this court deems just and proper.

Sally G. Calhoun
Attorney for Plaintiff
Fed. I.D. NO.: 4414
205 E. Park Ave.
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242-4228

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

| | | |
|---|---|---|
| Sharon Brown , Administratrix of the Estate of Ronnie Lee Brown, deceased, | ) | C.A. No.: 7:93-1254-20 |
| Plaintiff, | ) | |
| v. | ) | |
| R. Odom, Terry Gory and Michael Woodcock, individually and as Police Officers of the Police Division of the City of Spartanburg Public Safety Department | ) | COMPLAINT (Wrongful Death) (Jury Trial Demanded) |
| Defendants. | ) | |

Plaintiff complaining of the Defendants would respectfully show:

1. This is an action at law to redress the deprivation under color of State law of a right, privilege or immunity guaranteed Plaintiff's Intestate by the Constitution of the United States. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. §§ 1983, 1988.

2. Jurisdiction is invoked under 28 U.S.C. §1343.

3. Plaintiff is a citizen and resident of South Carolina, and is the duly appointed administratrix of the estate of

Ronnie Lee Brown, who died in the manner alleged herein on June 19, 1990. He was a 19-year-old citizen of the United States and resident of Spartanburg County, South Carolina.

4. This action is brought for the benefit of decedent's mother and father, beneficiaries under §15-51-20, S.C. Code of Laws 1976.

5. At all times herein mentioned Defendants, R. M. Odom, Terry Gordy, and Michael Woodcock, who are citizens and residents the County of Spartanburg, South Carolina, were duly appointed acting police officers in the Police Division of the City Spartanburg Public Safety Department, Spartanburg, South Carolina. This action is brought against them in their personal capacity as police officers.

6. At all times mentioned herein the Defendants acted under color or pretense of the statutes, ordinances, regulations, customs and usages of the City of Spartanburg, South Carolina; and the Defendants engaged in the illegal conduct hereafter described, to the injury and death of Plaintiff's decedent, and the statutory beneficiaries of the rights, privileges, and immunities secured by the Constitution of the United States of America.

7. On June 19, 1990, at about 4:00 p.m. Plaintiff's decedent was arrested and taken into custody by Defendants, Odom and Gory, on a public street in the City of Spartanburg, South Carolina. Plaintiff's decedent, who suffered from asthma, was unable to get his breath, and although Defendants Odom and Gory were made aware of that fact, they nevertheless handcuffed Plaintiff's decedent, shoved him into their patrol car, and took him to the Spartanburg City Jail. When they arrived, Plaintiff's decedent was still unable to breathe or even to stand alone, but Defendants refused to remove the handcuffs, and dragged him into the jail. Upon seeing he condition of Plaintiff's decedent, the

jailer refused to book him, and after further delay Defendants, corn and Woodcock, transported Plaintiff's decedent to the Emergency Room at the Spartanburg Regional Medical Center where, without having received any medical attention or relief, he died as a result thereof about 5:55 p.m..

8. At the times hereinabove set forth, Defendants Odom, Gory and Woodcock acted in reckless disregard for, and with conscious and deliberate indifference toward, the rights, privileges and immunities secured Plaintiff's decedent and :hereby, the statutory beneficiaries, by the Constitution and laws of the United States, in the following particulars:

a. In forcibly manhandling and handcuffing Plaintiff's decedent when he was visibly in a distressed and helpless condition;

b. In not rendering any medical or humanitarian assistance to Plaintiff's decedent;

c. In refusing and failing to obtain immediate medical Attention of Plaintiff's decedent although they were aware that he was in need thereof

d. In refusing to permit the mother of Plaintiff's decedent to attend her son;

e. In refusing to transport Plaintiff's decedent to a place where he could receive immediate medical assistance, which was visibly required;

f. In transporting Plaintiff's decedent to jail despite his obviously critical physical condition;

g. In refusing to permit the mother of Plaintiff's decedent to accompany her son into the Spartanburg Regional Medical Center, or to offer him assistance;

h. In exercising total disregard of the health and welfare of Plaintiff's decedent while he was in their custody;

i. In treating Plaintiff's decedent in a

manner which was not within the bounds of decency;

j. In acting with gross and total disregard of the safety and life of Plaintiff's decedent under the circumstances then existing.

9. As a direct and proximate result of the acts and omissions of the Defendants as hereinabove set forth, Plaintiff's decedent departed life survived by the statutory beneficiaries who were proximately and directly damaged in that they suffered mental shock and wounded feelings, intense grief and sorrow, and they were suddenly and permanently deprived of the services, love, companionship, and use and comfort of the society of Plaintiff's decedent.

10. At the time of his death, Plaintiff's decedent had a life expectancy of 53.27 years according to the Life Expectancy Table contained in S.C. Code, 1976 §19-1-1150.

11. Plaintiff is entitled to judgment against Defendants, jointly and severally, for actual and punitive damages.

**WHEREFORE**, Plaintiff demands judgment against Defendants, jointly and severally for actual and punitive damages in such amount as is appropriate, for attorney fees, and for such other further relief as this court deems just and proper.

Respectfully submitted,

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205 E. Park Ave.
Greenville, S.C. 29601
242-4228

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

| | | |
|---|---|---|
| Sharon Brown, as Personal Representative of the Estate of Ronnie Lee Brown, deceased, | ) | |
| Plaintiff, | ) | C.A. Nos. |
| vs. | ) | 7:93-1253-20 |
| | ) | 7:93-1254-20 |
| Rozanne M. Odom, Terry Gory and Michael Woodcock, individually and as Police Officers in the Police Division of the City of Spartanburg Public Safety Department, | ) | ORDER |
| Defendants. | ) | |

This matter is before the court on the motion of the defendants for summary judgment. For the following reasons, the defendants' motion is granted.

This case arises out of the arrest and death of the deceased, Ronnie Lee Brown ("Brown"). Brown was arrested on June 19, 1990, at approximately 4:45 p.m., after a lengthy chase on foot. The officers arrived at the Spartanburg City Hall Jail with Brown at approximately 5:00 p.m., where it was discovered that Brown was having difficulty breathing. At 5:06 p.m., the officers escorted Brown from the jail to the Spartanburg Regional Medical Center, arriving at 5:12 p.m. The foregoing sequence of

events is undisputed by the parties. Brown's personal representative filed these lawsuits pursuant to 42 U.S.C. § 1983, alleging that the defendants had violated Brown's Fourteenth Amendment rights by ignoring his medical needs while he was in police custody. The defendants moved for summary judgment.

In order to maintain a § 1983 cause of action under the Fourteenth Amendment, a pre-trial detainee must allege acts or omissions sufficiently harmful to evidence deliberate indifference to his serious medical needs. Belcher v. Oliver, 898 F.2d 32, 34 (4th Cir. 1990).[1] It is undisputed that less than half an hour elapsed between the time that Brown was arrested and the time he was brought to the Spartanburg Regional Medical Center. Brown's personal representative has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs.

Therefore, it is hereby ordered that the motion of the defendants for summary judgment is granted.

IT IS SO ORDERED.

Henry Herlong, Jr.
United States District Judge

Greenville,
South Carolina
March 24, 1994

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[1] It should be noted that the standard that applies to a prisoner's Eighth Amendment claims for deliberate indifference to serious medical needs is the same standard that applies to a pre-trial detainee's Fourteenth Amendment claim for deliberate indifference to serious medical needs. See Whisenant v. Yuam, 739 F.2d 160 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF: South Carolina
Spartanburg Division

Sharon Brown, as Personal Representative of the Estate of Ronnie Lee Brown, deceased

v.

**JUDGMENT IN A CIVIL CASE**

Rozanne M. Odom, Terry Gory and Michael Woodcock, individually and as Police Officers in the Police Division of the City of Spartanburg Public Safety Department

Case Number:
7:93-1253-20
7:93-1254-20

__**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___**Decision by Court.** This action came to XXXX before the Court. The issues having been considered decision has been rendered that defendants' motion for summary judgment is granted

IT IS ORDERED AND ADJUDGED that Summary Judgment is entered for the defendants, Rozanne M. Odom, Terry Gory and Michael Woodcock, individually and as Police Officers in the Police Division of the City of Spartanburg Public Safety Department.

March 24, 1994

ANN A. BIRCH

*Clerk*

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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SHARON BROWN,
Administratrix of the Estate of
Ronnie Lee Brown,
deceased,

*Plaintiff-Appellant,*

v.

No. 94-1566

R. ODOM, individually and as police officer of the police division of the City of Spartanburg Public Safety Department; TERRY GORY, individually and as police officer of the police division of the City of Spartanburg Public Safety Department; MICHAEL WOODCOCK, individually and as police officer of the police division of the City of Spartanburg Public Safety Department,

*Defendants-Appellees.*

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Appeal from the United States District Court
for the District of South Carolina, at Spartanburg.
Henry M. Herlong, Jr., District Judge.
(CA-93-1254-7-20)

Argued: April 6, 1995

Decided: June 5, 1995

Before MURNAGHAN, HAMILTON, and WILLIAMS,
Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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COUNSEL

**ARGUED:** Mary P. Miles, LAW OFFICES OF MARY P. MILES, Columbia, South Carolina, for Appellant. Andrew Frederick Lindemann, ELLIS, LAWHORNE, DAVIDSON & SIMS, P.A., Columbia, South Carolina, for Appellees. ON BRIEF: William H. Davidson, II, Elizabeth N. Keenan, ELLIS, LAWHORNE, DAVIDSON & SIMS, P.A., Columbia, South Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

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OPINION

PER CURIAM:

The Spartanburg, South Carolina police, responding to a call regarding a forgery in progress, attempted to apprehend Ronnie Lee Brown, who was exiting the store in which the crime had taken place. After a chase, Brown was arrested and brought by the police to the city jail. He complained of being hot and of having trouble breathing, and his mother indicated that he suffered from asthma. After consulting with a supervisor, the officer who had transported Brown to the police station took him to the hospital, where Brown later died of acute respiratory arrest.

Brown's representative brought an action against the officers who initially chased Brown and those who took him to the hospital, claiming a violation of the Due Process Clause based on their deliberate indifference to Brown's serious medical needs. The district court granted summary judgment to the defendants, and the plaintiff has appealed.

On June 19, 1990 at approximately 4:07 p.m., the Spartanburg Public Safety Department dispatched Officers Rozanne Odom and Terry Gory to the Mister Money establishment at 418 West Main Street in Spartanburg, South Carolina to respond to a possible forgery in progress. When the officers arrived at the scene, Brown, an individual who fit the description of the suspect, was exiting the store. As Gory approached Brown, Brown began to run. Gory chased him on foot but then lost sight of him behind a car dealership; Odom pursued Brown by car at the same time, but also lost track of him. While other officers continued to search for the suspect, Gory and Odom returned to the store to take an incident report. Gory then dropped Odom off at her patrol vehicle, and when an officer reported having spotted the suspect, Gory resumed his pursuit of Brown by car. Brown was apprehended at approximately 4:45 p.m. by Officer Christopher Banks, and Gory arrived at the scene soon after to assist in the arrest.

Banks turned Brown over to the custody of Gory and Officer Michael Woodcock. Brown complained of being tired and "appeared winded," and Banks and Woodcock helped him walk the approximately eighty yards to Gory's patrol car. Brown's mother, Shirley Rice, showed up on the scene while Brown was being put into Gory's patrol car, and followed the police to the city jail. On the way to the jail, Brown complained of being shot, and Gory opened the windows and turned on the air conditioner. Gory and Rice helped Brown from the patrol car upon their

arrival at the jail, and when Brown complained that he could not breathe, Gory sat him down the floor inside the jail. According to the detention supervisor, Bonita Smith, Brown fell down when Gory brought him in, and Brown and his mother were yelling at the officers to take off his handcuffs; Brown was breathing heavily while the officers stood beside him. Smith refused to accept Brown into the jail and suggested that he be checked by a doctor, based on Rice's contention that Brown was having an asthma attack. However, Smith also testified that what she observed of Brown's condition did not seem to correspond to Brown's mother's assertions regarding asthma.

At approximately 5:00 p.m., Gory went to speak to his supervisor, Lieutenant C.E. Ridgeway, and informed him that Brown was complaining of having trouble breathing. He told the Lieutenant that Rice had said that Brown had asthma but that he did not take medication. At approximately 5:06 p.m., Gory took Brown in his patrol car from the city jail to the Spartanburg Regional Medical Center. Woodcock followed in his own car; he stated in his affidavit that during the trip to the hospital, he saw Brown sit up and look around several times in the back seat of Gory's car. They arrived at the hospital at approximately 5:12 p.m., and Gory and Woodcock helped Brown into the hospital through the back entrance of the emergency room, where prisoners are taken; Brown could not walk by himself. They laid Brown on the floor in the emergency room and told a doctor about Brown's condition. The officers then carried Brown into another room and placed him on a stretcher and removed his handcuffs.

According to Gory, approximately thirty minutes later,

> a female hospital employee asked me where the suspect's chart was. I explained how the suspect came to be in the room and stated that I did not think a chart had been filled out. She walked in the room briefly. When

> leaving, she appeared mad. About two or three minutes later, another female entered the suspect's room and attempted to get information from him. The suspect did not respond. I attempted to get a response, but he just looked up.

Gory left the room to report to Ridgeway, and when Brown was checked on again, he had no pulse or respiration. Resuscitation attempts failed, and Brown was pronounced dead at 7:23 p.m.* An autopsy conducted the next morning revealed cocaine and cocaine metabolites in Brown's urine, but no cocaine metabolites in his blood. Dr. J. David Wren, the pathologist at the Spartanburg Regional Medical Center who completed Brown's autopsy report was surprised at the lack of metabolites in the blood, but opined that the long interval between the suspect's death and autopsy, as well as the period of time before analysis, might account for the degradation of cocaine metabolites in the blood. In his report, Wren wrote the following:

> In view of the history of asthma in this individual, an extensive search through medical records has been performed. A possible asthmatic attack was noted approximately five years prior to this episode but none since that time. Additionally, investigation by the Coroner with the family reveals no visits to a physician recently for asthmatic complaints. Finally, there was no gross or microscopic evidence of asthma *thus an asthmatic attack is essentially eliminated.*
>
> Based on the history and autopsy findings as stated in this protocol, it is my opinion that *this individual died as a result of acute respiratory arrest secondary to cocaine ingestion.*

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*The actual time of death may have been as early as 6:20 p.m.

(emphasis added). Rice testified at her deposition that she never told the police about Brown's use of cocaine.

On May 27, 1993, Sharon Brown, as the personal representative of Brown's estate, brought an action under 42 U.S.C. §§ 1983 and 1988 in the United States District Court for the District of South Carolina. She named as defendants in both their official and individual capacities Officers Rozanne Odom, Terry Gory, and Michael Woodcock, alleging a violation of the Due Process Clause of the Fourteenth Amendment due to the officers' deliberate indifference to Brown's serious medical needs. On February 25, 1994, the defendants moved for summary judgment which was granted on March 25, 1994 as to all defendants in both their official and individual capacities. The district judge ruled that "Brown's, personal representative has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs."

Our review of the record satisfies us that the district judge was correct, and we affirm the grant of summary judgment. A claim of deliberate indifference to serious medical needs would require a greater showing than was made here, even if it were to be assumed that Brown's medical needs were serious and that a finding of negligence on the part of one or more defendants could be supported by the evidence. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

Less than one-half hour elapsed between the time Brown was apprehended and the time the officers arrived with him at the hospital. While in some situations, a delay of one-half hour could constitute deliberate indifference, such was not the case here, because the police had no reason to believe that the delay would put Brown in danger.

Considering the information available to the police, their decision to bring him to the jail from the site of the arrest rather than bringing him directly to the hospital was not unreasonable. There was no proof that the police deliberately delayed taking Brown to the hospital after realizing that he was experiencing trouble breathing and should be examined by a doctor. In addition, the fact that the officers used a police car to transport Brown to the hospital instead of summoning a rescue vehicle, and the fact that they themselves took him into the hospital instead of waiting for a litter or a stretcher, in no way showed that they were indifferent to his medical needs. The police reacted as quickly as was warranted to the situation as they perceived it.

Accordingly, the judgment is

*AFFIRMED.*

Supreme Court, U.S.
FILED
OCT 5 1996
CLERK

No. 95-429

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SHARON BROWN,
ADMINISTRATRIX OF THE ESTATE OF
RONNIE LEE BROWN, DECEASED,

*Petitioner*

v.

ROZANNE ODOM, TERRY GORY,
AND MICHAEL WOODCOCK, Individually
and as Officers of the City of
Spartanburg Public Safety Department

*Respondents.*

**ON WRIT OF CERTIORARI TO
THE FOURTH CIRCUIT COURT OF APPEALS**

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENTS

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## STATEMENT OF THE CASE

### I. Nature of the Case

The Petitioner, Sharon Brown, as the Personal Representative of the Estate of Ronnie Lee Brown, brought suit under 42 U.S.C. § 1983, alleging a violation of the Due Process Clause of the Fourteenth Amendment. The Petitioner named as defendants in the action three officers with the Public Safety Department of the City of Spartanburg, South Carolina: Rozanne Odom, Terry Gory, and Michael Woodcock. The three officers were sued in both their individual and official capacities. The Petitioner has asserted a survival action and a wrongful death action against each of the three police officers.

## II. Proceedings in the District Court

The Petitioner, Sharon Brown, filed her complaints in the wrongful death and survival actions on May 27, 1993. The Respondents filed their answers on July 16, 1993. Following the completion of discovery, the Respondents moved for summary judgment. (App. 44-45). That motion was heard by the Honorable Henry M. Herlong, Jr., who issued an order, filed on March 25, 1994, granting the Respondents' motion for summary judgment. (App. 82-84). Judge Herlong specifically found that the Petitioner "has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs." (App. 83).

The Petitioner, Sharon Brown, thereafter filed a timely notice of appeal

to the Fourth Circuit Court of Appeals. During the pendency of that appeal, the Petitioner Brown filed a motion with the district court, pursuant to Rule 10(e), FRAP, to correct or supplement the record on appeal. The Petitioner attempted to include in the record on appeal portions of the depositions taken of Shirley Rice and Bonita Smith, which had not been previously submitted to or filed with the district court. The Respondents opposed this motion. By his order filed on August 3, 1994, the Honorable Henry M. Herlong, Jr. denied the inclusion of the deposition testimony in the record on appeal. Moreover, Judge Herlong clearly explained that portions of the Rice and Smith depositions that were not filed "were not before the court when it was considering the motion for summary judgment." See, Order of the Honorable Henry M. Herlong,

Jr., filed August 3, 1994.

## III. Proceedings in the Fourth Circuit Court of Appeals

After the district court denied her motion pursuant to Rule 10(e), FRAP, the Petitioner Brown renewed her motion before the Fourth Circuit Court of Appeals. By order filed August 23, 1994, the Fourth Circuit also denied Brown's motion to include those portions of the Rice and Smith depositions in the record on appeal. The Fourth Circuit Court of Appeals further stated:

> The district court explained in its order that the portions of the depositions and other materials with which the appellant wished to supplement the record on appeal were not presented or considered by the district court during the pendency of the case below.

See, Order of the Fourth Circuit Court of Appeals, filed August 23, 1994.

## IV. Decision in the Fourth Circuit Court of Appeals

The Fourth Circuit Court of Appeals heard arguments in this action on April 6, 1995. The Court thereafter issued an unpublished decision on June 5, 1995, thereby affirming the decision of the district court granting the Defendants' motion for summary judgment. See, Brown v. Odom, et al., Op. No. 94-1566 (4th Cir. filed June 5, 1995).[1]

## V. Statement of Facts

On June 19, 1990, at approximately 4:07 p.m., the Spartanburg Public Safety Department dispatched a call to

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[1] In her brief to the Fourth Circuit, the Petitioner's counsel continued to cite and rely upon deposition testimony that was not part of the record in the district court.

Respondents, Rozanne Odom and Terry Gory, for a forgery in progress at the Mister Money establishment located on West Main Street in Spartanburg, South Carolina. When the officers arrived on the scene, a suspect fitting the given description (later identified as Ronnie Lee Brown) exited the establishment. Officer Gory approached the individual, who took off running. (App. 56). A lengthy chase ensured as the suspect (Brown) continued to flee from police. (App. 58-59).

At approximately 4:45 p.m., Ronnie Lee Brown was apprehended and arrested. (App. 63). He claimed to be tired from the lengthy chase. (App. 59). Brown was then transported to the Spartanburg City Jail, which is adjacent to City Hall. During the trip to the jail, Brown only complained that he was hot. (App. 59). He did not complain of difficulty

breathing. Upon his arrival at the City Jail at approximately 5:00 p.m., Brown began complaining of difficulty breathing. (App. 59). Ronnie Lee Brown's mother, Shirley Rice, arrived at the jail and informed the police officers that her son was "having an asthma attack." (App. 72-74). Both Brown and his mother were yelling for the police to remove the handcuffs from Brown. (App. 72-74).

The jailer, Bonita Smith, suggested that Ronnie Lee Brown's condition should be checked by a physician, given the mother's contention that he was suffering from asthma. (App. 74). Officer Gory then consulted with his supervisor and a decision was immediately made to transport Brown to the emergency room at Spartanburg Regional Medical Center. (App. 60, 66). At approximately 5:06 p.m., Officer Gory left the City Jail with Brown and arrived

at the hospital at 5:12 p.m. (App. 60). Brown was assisted into the emergency room, where medical care was provided by hospital personnel. While in the hospital, Ronnie Lee Brown went into cardiac arrest as a result of cocaine ingestion. Resuscitation attempts were unsuccessful, and Brown was pronounced dead at approximately 6:20 p.m.

An autopsy performed the following day revealed the cause of death to be "acute respiratory arrest secondary to cocaine ingestion." (App. 51). The autopsy report further states that a urinalysis performed by the South Carolina Law Enforcement Division (SLED) "revealed cocaine and cocaine metabolites in the urine." (App. 51).

## REASONS FOR DENYING WRIT

### I. THROUGHOUT HER PETITION FOR WRIT OF CERTIORARI, THE PETITIONER RELIES ON DEPOSITION TESTIMONY AND OTHER DOCUMENTS THAT ARE NOT PART OF THE RECORD ON APPEAL.

Throughout her Petition for Writ of Certiorari, the Petitioner repeatedly cites to deposition testimony and other documents that were not part of the record in the district court nor in the court of appeals.[2] As a result of the various motions to supplement the record that were filed and decided during the pendency of the appeals, the Petitioner is well aware that both the district court and the Fourth Circuit Court of Appeals refused to allow the Petitioner to supplement the

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[2] In Supreme Court Rule 15.1, respondents are required to set forth perceived misstatements of law or fact that are set forth in the Petition for Writ of Certiorari.

record on appeal with the disputed materials. The Petitioner has not, however, appealed the rulings of the district court and the Fourth Circuit Court of Appeals with regard to the Rule 10(e), FRAP motions.

It is important to recognize that the Petitioner's reliance on matters outside the record has occurred multiple times throughout her petition. For instance, on page 7 of the petition, the Plaintiff's counsel cites to the Defendant's answers to the Plaintiff's interrogatories, which were not part of the record. Likewise, on pages 8, 9, 10, 11, 12, 21, 22, and 23 of the petition, the Plaintiff's counsel either directly cites to or relies on deposition testimony of Shirley Rice that is not in the record. In addition, on page 14 of the petition, the Plaintiff's counsel references "health insurance forms

and medical forms" which were not part of the record.

The Petitioner's entire petition and her arguments contained therein are tainted by her constant reliance on materials not included in the record and expressly not considered by the lower courts.

## II. SUMMARY JUDGMENT WAS PROPERLY GRANTED IN FAVOR OF THE RESPONDENTS IN THAT THE EVIDENCE IN THE RECORD DEMONSTRATES THAT THE RESPONDENTS WERE NOT DELIBERATELY INDIFFERENT TO THE MEDICAL NEEDS OR CONDITION OF RONNIE LEE BROWN.

At the time that Ronnie Lee Brown was in the custody of the Spartanburg Public Safety Department, he was a pre-trial detainee. He was in custody less than thirty minutes when he was transported to and arrived at the Spartanburg Regional Medical Center. (App. 60). As a pre-

trial detainee, Ronnie Lee Brown had a constitutional right to receive medical treatment. See, Gray v. Farley, 13 F.3d 142 (4th Cir. 1993). Because he was a pre-trial detainee, "the standard of care is governed by the due process clause of the fourteenth amendment rather than the eighth amendment's prohibition against cruel and unusual punishment." Hill v. Nicodemus, 979 F.2d 987, 990 (4th Cir. 1992). "[T]he due process clause mandates the provision of medical care to detainees who require it." Hill, 979 F.2d at 991. Nonetheless, it is well settled that a pre-trial detainee states a due process claim only "if he shows 'deliberate indifference to serious medical needs' within the meaning of Estelle v. Gamble." Martin v. Gentile, 849 F.2d 863, 871 (4th Cir. 1988). (Citation omitted). See also, Gray v. Farley, 13 F.3d 142 (4th

Cir. 1993); Whisenant v. Yuam, 739 F.2d 160 (4th Cir. 1984).

"A prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 106 (1976). The United States Supreme Court examined the meaning of the term "deliberate indifference" in the case of Farmer v. Brennan, ___ U.S. ___, 114 S.Ct. 1970 (1994). In Farmer, the Court explained:

> We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a

> substantial risk of serious harm exists, and he must also draw the inference.

114 S.Ct. at 1979.

In the present case, the affidavits of the various individuals involved in the arrest of Ronnie Lee Brown do not reflect any deliberate indifference to the medical needs of Brown. As the incident report reflects, Brown was arrested at 4:45 p.m. on June 19, 1990. (App. 63). Brown was arrested after an approximately thirty minute pursuit. Brown led an on-foot pursuit that involved several police officers including Officer Terry Gory. (App. 58-59). Brown was then transported to the Spartanburg City Jail, which is located adjacent to Spartanburg City Hall. (App. 59). While being transported to the City Jail by Officer Gory, Brown reported being hot. (App. 59). He did not report any difficulty breathing until his arrival

at the City Jail. (App. 59). At the City Jail, Brown's mother, Shirley Rice, who had followed Officer Gory to the City Jail, apparently reported at the City Jail that Brown was "having an asthma attack." (App. 74). Shirley Rice at no time reported to the officers, while Brown was having his alleged asthma attack, that Brown had ingested cocaine or had a cocaine problem. (App. 81).

At approximately 5:00 p.m., Officer Gory consulted with his supervisor, C.E. Ridgeway, regarding transporting Ronnie Lee Brown to the hospital because of his asthma attack. (App. 60, 66). Brown was immediately transported by Officer Gory to the Spartanburg Regional Medical Center. Brown arrived at the emergency room at 5:12 p.m. (App. 60). Upon Brown's arrival at the emergency room, the police had no responsibility for the quality of

the medical care provided to Brown.

The aforementioned facts, which are undisputed in the record presented to the district court, demonstrate no deliberate indifference, as a matter of law, to Ronnie Lee Brown's medical needs. Less than thirty minutes transpired from the time of arrest (4:45 p.m.) until Brown arrived at the hospital (5:12 p.m.). During those thirty minutes, the police officers were only told that Brown was suffering from asthma. And, the "asthma attack" itself was not claimed until Brown's arrival at the City Jail. Moreover, the police officers were not informed at any time that Brown had ingested cocaine. No eyewitness testimony that was submitted into evidence reflects that Brown was in any distress nor that his condition was life-threatening.

Therefore, the district court was

correct in ruling that the Appellant Brown "has shown absolutely no evidence that the police officers involved acted with deliberate indifference to Brown's serious medical needs." (App. 83). Moreover, the Fourth Circuit Court of Appeals was correct in affirming the district court's decision.

The Petitioner attempts to argue on appeal that any delay, even a matter of minutes, was too long and constitutes deliberate indifference. The Petitioner, however, has presented no expert testimony to suggest that any delay in being hospitalized proximately caused the death of Ronnie Lee Brown. The Petitioner also argues that the alleged denial of medical care was the result of penal motives. There is, however, again no evidence of any punishment being inflicted by the police officers. To the contrary, the

quick response time by the police officers in transporting Brown to the hospital fails to suggest any improper motives.

Consequently, there is no evidence in the record to support a finding that the police officers were deliberately indifferent to the serious medical needs of Ronnie Lee Brown. Therefore, the decisions of the lower courts were correct, and the issuance of a writ of certiorari is not warranted.[3]

## III. THE PETITIONER HAS FAILED TO DEMONSTRATE SUFFICIENT REASONS FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Supreme Court Rule 10 sets forth several reasons to support the United States Supreme Court's issuance of a writ

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[3] The Respondents raised several additional sustaining grounds, including a qualified immunity ground, that were not reached by the Fourth Circuit Court of Appeals.

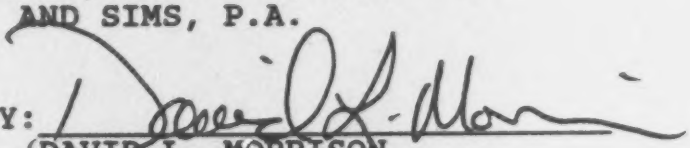
of certiorari. The Petitioner has failed, however, to demonstrate that the present case falls within any of those criteria. First, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a federal court of appeals on the same matter. Second, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a state court that addresses similar issues. And third, the decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court. The Petitioner, therefore, has failed to establish that the issuance of a writ of certiorari in this case is warranted.

## CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the Fourth Circuit Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

ELLIS, LAWHORNE, DAVIDSON AND SIMS, P.A.

BY: 

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October 3, 1995